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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. JASON EDWARD DEAN, Petitioner.	2 CA-CR 2008-0084-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20030683

Honorable Jan E. Kearney, Judge

REVIEW GRANTED; RELIEF DENIED

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B R A M M E R, Judge.

¶1 Jason Edward Dean was tried by a jury, convicted of first-degree murder, and sentenced to life imprisonment without the possibility of release for twenty-five years. We

affirmed his conviction and sentence on appeal. *State v. Dean*, No. 2 CA-CR 2005-0364 (memorandum decision filed Nov. 29, 2006). Our supreme court denied review of that decision.

¶2 Dean filed a timely notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In his ensuing petition, he requested a new trial on the grounds that (1) newly discovered evidence created reasonable doubt about his guilt and (2) trial counsel had been ineffective in failing to present exculpatory evidence and in failing to ask that the jury be instructed that it could return a verdict on assault as a lesser included offense. According to Dean, he was also able to demonstrate by clear and convincing evidence that, based on the facts underlying his claims, no reasonable jury would have found him guilty of murder beyond a reasonable doubt. *See* Ariz. R. Crim. P. 32.1(h).

¶3 After conducting a two-day evidentiary hearing, the trial court denied relief in a detailed, twelve-page ruling. Dean then moved for rehearing, challenging the court's factual findings and legal analysis. The court denied the request for rehearing, again ruling in a thorough order that addressed each of Dean's arguments. This petition for review followed. We will not disturb a trial court's ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none here.

¶4 In his petition for review, Dean contends the trial court "erred" in failing to grant him a new trial despite evidence that Dean's codefendant, Juan Felix, had told his mother on the day after the murder that he, and not Dean, had fatally stabbed the victim

during an altercation among the three men. He also maintains that, contrary to the court's ruling, he has established that trial counsel was ineffective in failing to call two other witnesses—known to counsel at the time of trial—who would have testified to similar statements by Felix and also in failing to request a form of verdict for simple assault. Finally, Dean argues the court "applied the wrong legal standard" in determining Dean had not established either that the testimony of Felix's mother "probably would have changed the verdict," Ariz. R. Crim. P. 32.1(e)(3), or that, based on the facts underlying Dean's Rule 32 claim, no reasonable juror would have found him guilty of murder beyond a reasonable doubt, Ariz. R. Crim. P. 32.1(h).[1]

¶5 In support of his argument that he is entitled to relief notwithstanding the trial court's decision, Dean relies generally on *State v. Hickle*, 133 Ariz. 234, 650 P.2d 1216 (1982), in which our supreme court affirmed the granting of a new trial based on newly discovered evidence. As an initial matter, we are not persuaded that the facts relevant to Dean's claim of newly discovered evidence are analogous to those in *Hickle*. There,

[1]Although Dean broadly asserts that the testimony of six other witnesses and certain letters Felix wrote to Dean were also newly discovered evidence that Felix had admitted stabbing the victim, he fails to address the trial court's findings that Felix's alleged admissions to four of these witnesses, as well as his ambiguous messages in correspondence to Dean, could not constitute newly discovered evidence because they did not exist at the time of trial but occurred or were created only after Dean had been found guilty. *See State v. Bilke*, 162 Ariz. 51, 52, 781 P.2d 28, 29 (1989). Nor does he challenge the court's finding that the other two of these witnesses had been "known and available at the time of trial" and their testimony therefore could not be characterized as newly discovered evidence. *See id.*; Ariz. R. Crim. P. 32.1(e)(1). Similarly, although Dean asserts counsel had been ineffective in failing "to discover and utilize witnesses to [Felix's] confessions," he fails to address the court's findings that counsel was not ineffective for failing to introduce evidence that was either unknown or nonexistent at the time of trial.

Hickle's codefendant had testified against him at trial, then later equivocated about the accuracy of his testimony. On review, the court specifically considered the importance of the codefendant's testimony to the state's case and determined that "the trial judge, after listening to [the codefendant's] testimony, could find that the new evidence would probably have changed the verdict." *Id.* at 238, 650 P.2d at 1220; *see also* Ariz. R. Crim. P. 32.1(e)(3) (newly discovered material facts entitling defendant to relief do not include facts "used solely for impeachment, unless the impeachment evidence substantially undermines testimony which was of critical significance at trial" and "probably would have changed the verdict").

¶6 Here, in contrast, Felix did not testify at Dean's trial, and his sworn statements inculpating Dean therefore had no effect on the verdict.[2] Hence, the trial court reasonably could have found that, given the independent evidence of Dean's complicity in the murder, and the conflict between Felix's sworn statements and his alleged out-of-court statements to others, the jury probably would still have found Dean guilty despite the new evidence he has proposed. *See State v. Fisher*, 141 Ariz. 227, 251, 686 P.2d 750, 774 (1984) (reasonable to find witness's recantation unlikely to affect verdict because of numerous prior inconsistent statements).

[2]At Dean's previous trial, which ended in a mistrial after another witness volunteered that Felix had been acquitted of the murder, Felix testified that Dean had stabbed the victim. Thus, the trial court was familiar with the sworn testimony Felix had given at Dean's first trial, in his deposition, and at the Rule 32 evidentiary hearing. On each occasion, Felix had testified that he had not stabbed the victim.

¶7 More important, the *Hickle* decision illustrates that "[a] petition for post-conviction relief is addressed to the sound discretion of the trial court," *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986), and that "we give particular weight to the trial court's judgment in cases involving recanted testimony." *State v. Krum*, 183 Ariz. 288, 293, 903 P.2d 596, 601 (1995). Thus, as the court in *Hickle* noted, "Although . . . recanted testimony is not favored as being 'inherently unreliable,' the trial judge is still in the best position to evaluate its credibility and effect." 133 Ariz. at 238, 650 P.2d at 1220. We afford the same deference to the court in this case, absent an abuse of its discretion. *See Watton*, 164 Ariz. at 325, 793 P.2d at 82.

¶8 Apart from his reliance on *Hickle*, Dean raises the same arguments in his petition for review that he raised in his motion for rehearing. In its rulings denying that motion and the petition for post-conviction relief, the trial court reviewed the evidence presented at trial and at the Rule 32 evidentiary hearing, including the testimony of Dean's former counsel about the basis for his decisions at trial; analyzed in depth Dean's claims of newly discovered evidence, actual innocence, and ineffective assistance of counsel; and properly applied the relevant law. For reasons explained fully in its written orders, the court found Dean had not shown counsel's performance had fallen below an objective professional standard of care in any of the instances of ineffectiveness alleged. Even if it had, the court found, Dean had not demonstrated a reasonable probability that the result of his trial would have been different but for counsel's acts or omissions. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984). Similarly, the court found the newly discovered

evidence of Felix's alleged conversation with his mother after the murder—the only evidence Dean presented that existed but was unknown to him at the time of his trial—was not evidence that "probably would have changed the verdict," as required for relief under Rule 32.1(e)(3), particularly in light of the evidence at trial that would have supported a guilty verdict in any event based on Dean's liability as an accomplice. For the same reasons, the court found Dean had failed to show that "no reasonable fact-finder would have found [him] guilty" of murder beyond a reasonable doubt. Ariz. R. Crim. P. 32.1(h).

¶9 Because the court clearly identified, thoroughly analyzed, and properly resolved all of the issues Dean presented, we need not revisit the court's analysis of those issues. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court['s] rehashing the trial court's correct ruling in a written decision").

¶10 Accordingly, we grant the petition for review, but we deny relief.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge